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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of) MM DOCKET NO. 96-172
)
MARIO LOREDO)
)
Order to Show Cause Why the License)
for Station KZQD(FM) in Liberal, Kansas)
Should Not be Revoked)

To: Administrative Law Judge
Richard L. Sippel

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MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respectfully submitted,
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December 19, 1996

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**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Preliminary Statement

1. By Order to Show Cause and Notice of Apparent Liability, FCC 96-352, released August 27, 1996 (OSC), the Commission designated the construction permit of Mario Loreda ("Loreda") for unbuilt Radio Station KZQD(FM), Liberal, Kansas, and related applications for hearing on the following issues:

- a) To determine whether Mario Loreda made misrepresentations to the Commission, and violated 47 C.F.R. Section 73.1015, by stating in his assignment application (BAPH-930824GE), that he was a citizen of the United States and that he was not in violation of Section 310 of the Communications Act of 1934, as amended, when in fact, he was a citizen of Mexico.
- b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether, Mario Loreda possesses the requisite qualifications to be and remain the permittee of KZQD(FM), Liberal, Kansas.

2. The OSC further specified that if the hearing record does not warrant an Order revoking the permit for KZQD(FM), Liberal, Kansas, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the permittee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 310(b) of the Communications Act of 1934, as amended and/or Section 73.1015 of the Commission's Rules.

3. A hearing on the above issues was held on November 14, 1996. The record was closed on December 9, 1996. Tr. 62.

PROPOSED FINDINGS OF FACT

1. An application to assign the construction permit (Form FCC 314) of Station KZQD(FM) from Alpha Broadcasting, Inc. to Mario Loredo was filed with the Commission on August 24, 1993 (BAPH-930824GE). Loredo paid \$4,000 to acquire the construction permit. MMB Ex. 1, p. 1, Loredo Ex. 1, p. 2.

2. Loredo's attorney, Gerald Stevens-Kittner, prepared a draft of the application and sent it to Loredo with instructions for him to review it and, if no changes were required, to sign the application and return it to Mr. Stevens-Kittner. The instructions to the Form 314 were not included with the draft sent to Loredo. The individual questions and answers were not discussed with Loredo, who reads, speaks, writes, and understands English. Loredo Ex. 1, p. 2 and 3, Loredo Ex. 2, p. 1, Tr. 25 and 26.

3. In response to question 4b of FCC Form 314, which asks for the applicant's citizenship, Loredo responded that he was a citizen of the USA. Loredo was a citizen of Mexico at the time he indicated that he was a citizen of the United States in response to question 4b. Tr. 30, MMB Ex. 1, p. 4, MMB Ex. 2, p. 5.

4. In response to question 13(a) of FCC Form 314, which asks "Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, related to the interests of aliens and foreign governments? (See Instruction C to Section II)," Loredo answered, "No." However, Loredo admitted that he was not a US citizen at the time the FCC Form 314 was completed, and thus he was in violation of Section 310. Loredo Ex.

1, p. 3 and 4, MMB Ex. 2, p. 5.

5. Loredo was used to completing employment and other government-related forms that asked both whether he was a US citizen and/or a legal resident. Since questions 4b and 13(a) did not ask about both, it was not clear to Loredo that the questions required a distinction to be made between citizenship and legal residency. Moreover, although question 13(a) uses the word "alien", Loredo did not think it applied to him since he has been in the country approximately 37 years. Loredo came to the United States with his mother, who is a US citizen, when he was nine years old. He has been a legal resident since the early 1970's. Loredo Ex. 1, p. 2 and 3, Tr. 37, 60 and 61.

6. Loredo first became aware that he had to be a US citizen in order to own a radio station when the subject came up in a conversation with a friend that took place after the Form 314 had been filed. Upon learning of the US citizenship requirement, Loredo reviewed the Form 314 and contacted his attorney to point out that he may have answered questions 4b and 13(a) incorrectly. Loredo then instructed his attorney to bring the error to the Commission's attention. Loredo Ex. 1, p. 3, Tr. 52 and 55.

7. On May 4, 1995, within approximately two weeks of discovery of his error, Loredo voluntarily informed the Commission of the incorrect response when he filed an FCC Form 307, Application for Extension of Broadcast Construction Permit. MMB Ex. 2, p. 1 and 5, Loredo Ex. 1, p. 3 and 4.

8. In an attempt to correct the errors made in answering question 4b and 13(a), Loredó applied for US citizenship. He became a naturalized US citizen on December 18, 1995. Loredó Ex. 1, p. 3 - 4.

Conclusions of Law

1. It is well established that misrepresentation requires a false statement of fact made with an intent to deceive. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983). Intent can be found when the evidence supports a reasonable inference. California Public Broadcasting Forum v. FCC, 752 F. 2d 670, 679 (D.C. Cir. 1985). It can also be found from a showing of motive or "logical reason or desire to deceive." Scott & Davis Enterprises, Inc., 88 FCC 2d 1090, 1100 (Rev. Bd. 1982). The "bare existence of a mistake" in an application without any indication that the licensee meant to deceive the Commission will not raise a material question of fact. High Country Communications, 4 FCC Rcd 6237, 6238 (1989).

2. The facts of this case do not establish that Loredó intended to misrepresent his citizenship status when he indicated on the FCC Form 314 that he was a citizen of the United States at a time when he was actually a citizen of Mexico. At the time the Form 314 was completed, Loredó was unaware of the US citizenship requirement to own a radio station and thus had no motive to answer question 4b incorrectly. Moreover, Loredó's voluntary disclosure to the Commission of the incorrect citizenship response on his application is inconsistent with an intent to deceive. The record here establishes that when Loredó learned of the citizenship requirement, he quickly informed the Commission of the error he made in specifying his citizenship as "USA" on his 314 application.

3. Further, Loredó's explanation for the incorrect response is plausible. He has been in the United States for approximately 37 years. He was used to completing forms that asked about both US citizenship and legal residency. In responding to question 4b of FCC Form 314, which asks only about citizenship, Loredó did not distinguish between "citizenship" and "residency" and responded by indicating the name of the country he had called home for 37 years, "USA". It appears clear that Loredó had no intent to deceive the Commission in his response, but rather made a mistake in interpreting the question asked.

4. Finally, there were no barriers to Loredó becoming a US citizen. His mother was a US citizen and had he known of the requirement that licensees be US citizens he could have applied for citizenship at any time. Consequently, there was no need for Loredó to have falsified a document submitted to the FCC. In any case, he has now become a US citizen and is fully qualified to be a licensee.

Ultimate Conclusion

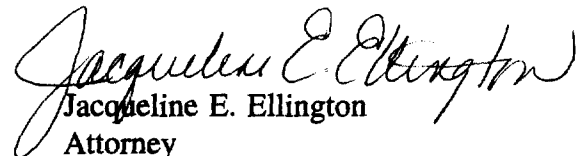
It is ultimately concluded from the record in this proceeding that Loredó made an unintentional mistake in responding to question 4b of FCC Form 314 as to his citizenship. The incorrect response to question 4b caused Loredó to be in violation of Section 310 of the Communications Act of 1934, as amended. That the mistake was unintentional is demonstrated by his quick action in voluntarily disclosing his error to the Commission. Under these circumstances, Loredó, who is now a US citizen, should not have his license to

operate Station KZQD(FM) revoked. Furthermore, in light of the unintentional nature of Loredó's actions, no forfeiture need be imposed.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

A handwritten signature in black ink, appearing to read 'Norman Goldstein', with a long horizontal flourish extending to the right.

Norman Goldstein
Chief, Complaints and
Political Programming Branch

A handwritten signature in black ink, appearing to read 'Jacqueline E. Ellington', with a long horizontal flourish extending to the right.

Jacqueline E. Ellington
Attorney
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December 19, 1996

CERTIFICATE OF SERVICE

Talya Lewis, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 19th day of December, 1996, sent by regular United States mail, U.S. Government frank, a copy of the foregoing "**Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law**" to:

Gerald Stevens-Kittner
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Talya Lewis